

violate the section 102 (c) ban against tying arrangements. Second, such provisions are deceptive under section 110 of the Act, because a warrantor cannot, as a matter of law, avoid liability under a written warranty where a defect is unrelated to the use by a consumer of "unauthorized" articles or service. This does not preclude a warrantor from expressly excluding liability for defects or damage caused by such "unauthorized" articles or service; nor does it preclude the warrantor from denying liability where the warrantor can demonstrate that the defect or damage was so caused.

§ 700.11 Written warranty, service contract, and insurance distinguished for purposes of compliance under the Act.

(a) The Act recognizes two types of agreements which may provide similar coverage of consumer products, the written warranty, and the service contract. In addition, other agreements may meet the statutory definitions of either "written warranty" or "service contract," but are sold and regulated under state law as contracts of insurance. One example is the automobile breakdown insurance policies sold in many jurisdictions and regulated by the state as a form of casualty insurance. The McCarran-Ferguson Act, 15 U.S.C. 1011 et seq., precludes jurisdiction under federal law over "the business of insurance" to the extent an agreement is regulated by state law as insurance. Thus, such agreements are subject to the Magnuson-Moss Warranty Act only to the extent they are not regulated in a particular state as the business of insurance.

(b) "Written warranty" and "service contract" are defined in sections 101(6) and 101(8) of the Act, respectively. A written warranty must be "part of the basis of the bargain." This means that it must be conveyed at the time of sale of the consumer product and the consumer must not give any consideration beyond the purchase price of the consumer product in order to benefit from the agreement. It is not a requirement of the Act that an agreement obligate a supplier of the consumer product to a written warranty, but merely that it be part of the basis of the bargain between

a supplier and a consumer. This contemplates written warranties by third-party non-suppliers.

(c) A service contract under the Act must meet the definitions of section 101(8). An agreement which would meet the definition of written warranty in section 101(6) (A) or (B) but for its failure to satisfy the basis of the bargain test is a service contract. For example, an agreement which calls for some consideration in addition to the purchase price of the consumer product, or which is entered into at some date after the purchase of the consumer product to which it applies, is a service contract. An agreement which relates only to the performance of maintenance and/or inspection services and which is not an undertaking, promise, or affirmation with respect to a specified level of performance, or that the product is free of defects in materials or workmanship, is a service contract. An agreement to perform periodic cleaning and inspection of a product over a specified period of time, even when offered at the time of sale and without charge to the consumer, is an example of such a service contract.

§ 700.12 Effective date of 16 CFR parts 701 and 702.

The Statement of Basis and Purpose of the final rules promulgated on December 31, 1975, provides that parts 701 and 702 of this chapter will become effective one year after the date of promulgation, December 31, 1976. The Commission intends this to mean that these rules apply only to written warranties on products manufactured after December 31, 1976.

PART 701—DISCLOSURE OF WRITTEN CONSUMER PRODUCT WARRANTY TERMS AND CONDITIONS

Sec.

701.1 Definitions.

701.2 Scope.

701.3 Written warranty terms.

701.4 Owner registration cards.

AUTHORITY: 15 U.S.C. 2302 and 2309.

SOURCE: 40 FR 60188, Dec. 31, 1975, unless otherwise noted.

Federal Trade Commission

§ 701.3

§ 701.1 Definitions.

(a) *The Act* means the Magnuson-Moss Warranty Federal Trade Commission Improvement Act, 15 U.S.C. 2301, et seq.

(b) *Consumer product* means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed. Products which are purchased solely for commercial or industrial use are excluded solely for purposes of this part.

(c) *Written warranty* means:

(1) Any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or

(2) Any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking, which written affirmation, promise or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

(d) *Implied warranty* means an implied warranty arising under State law (as modified by sections 104(a) and 108 of the Act) in connection with the sale by a supplier of a consumer product.

(e) *Remedy* means whichever of the following actions the warrantor elects:

(1) Repair,

(2) Replacement, or

(3) Refund; except that the warrantor may not elect refund unless:

(i) The warrantor is unable to provide replacement and repair is not commercially practicable or cannot be timely made, or

(ii) The consumer is willing to accept such refund.

(f) *Supplier* means any person engaged in the business of making a consumer

product directly or indirectly available to consumers.

(g) *Warrantor* means any supplier or other person who gives or offers to give a written warranty.

(h) *Consumer* means a buyer (other than for purposes of resale or use in the ordinary course of the buyer's business) of any consumer product, any person to whom such product is transferred during the duration of an implied or written warranty applicable to the product, and any other such person who is entitled by the terms of such warranty or under applicable State law to enforce against the warrantor the obligations of the warranty.

(i) *On the face of the warranty* means:

(1) Where the warranty is a single sheet with printing on both sides of the sheet or where the warranty is comprised of more than one sheet, the page on which the warranty text begins;

(2) Where the warranty is included as part of a larger document, such as a use and care manual, the page in such document on which the warranty text begins.

§ 701.2 Scope.

The regulations in this part establish requirements for warrantors for disclosing the terms and conditions of written warranties on consumer products actually costing the consumer more than \$15.00.

§ 701.3 Written warranty terms.

(a) Any warrantor warranting to a consumer by means of a written warranty a consumer product actually costing the consumer more than \$15.00 shall clearly and conspicuously disclose in a single document in simple and readily understood language, the following items of information:

(1) The identity of the party or parties to whom the written warranty is extended, if the enforceability of the written warranty is limited to the original consumer purchaser or is otherwise limited to persons other than every consumer owner during the term of the warranty;

(2) A clear description and identification of products, or parts, or characteristics, or components or properties covered by and where necessary for clarification, excluded from the warranty;